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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 In re
14 Cynthia A. Smith,
15 Debtor.
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19
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22

Case No. 18-30281-DM

Chapter 13

**MOTION FOR IN REM RELIEF
FROM AUTOMATIC STAY AND, IN
THE ALTERNATIVE, FOR
CONVERSION TO CHAPTER 7;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Preliminary Hearing:

Date: April 26, 2018

Time: 9:30 a.m.

Place: Courtroom 17

450 Golden Gate Avenue

San Francisco, CA 94012

Judge: Hon. Dennis Montali

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1 WVJP 2017-1, LP (“WVJP”) hereby files this motion (the “Motion”) for (i) *in rem*
2 relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4) with respect to the real
3 property located at 1539 Laurel Place, Menlo Park, California 94025 (the “Subject
4 Property”) or, in the alternative, stay relief under 11 U.S.C. §§ 362(d)(1) and/or 362(d)(2)
5 and (ii) if stay relief is not granted, for conversion of the above-captioned bankruptcy case
6 (the “Bankruptcy Case”) to chapter 7 pursuant to 11 U.S.C. § 1307(c).

7 **I.**

8 **INTRODUCTION**

9 Cynthia A. Smith, the debtor in the above-captioned case, (“Ms. Smith” or the
10 “Debtor”) is a serial pro se bankruptcy filer who has developed a habit of commencing
11 bankruptcy cases only to have them quickly dismissed when she fails to file anything other
12 than a petition. In 2016 alone, Ms. Smith filed for bankruptcy twice in less than four months,
13 only to have both cases dismissed within weeks of filing because she did not comply with
14 this Court’s order to file key documents such as a list of creditors, schedules and a plan of
15 reorganization. Now, less than two years later, Ms. Smith has again filed for bankruptcy
16 and yet again faces the prospect of a swift dismissal because she has failed to file more than
17 just a bare petition.

18 Each time Ms. Smith repeats this process, she unnecessarily and unfairly obstructs
19 the ability of her secured creditors to recover what they are owed. For instance, with this
20 latest bankruptcy case, Ms. Smith is obstructing the ability of WVJP to recover on a money
21 judgment, for which WVJP has recorded an abstract of judgment in the Official Records of
22 San Mateo County, California (the “Official Records”), where the Subject Property is
23 located. In addition, in a prior bankruptcy case, Ms. Smith appears to have filed bankruptcy
24 to obstruct the ability of her mortgage lender to sell the Subject Property at a foreclosure
25 sale. Thus, Ms. Smith’s history in bankruptcy clearly shows an intent to abuse the automatic
26 stay to frustrate creditors and bad faith in filing the Bankruptcy Case. The fact Ms. Smith
27 has filed each of her bankruptcy cases pro se and has never filed more than a petition, shows
28 she has never had any intention of reorganizing her finances or even complying with the

1 Bankruptcy Code, but has only ever intended to unfairly manipulate the code to her
2 inequitable advantage.

3 The Court should grant *in rem* stay relief in this case because the Debtor's last
4 bankruptcy filing is clearly part of an oft-repeated scheme to delay and hinder creditors who
5 are trying to exercise their rights against the Subject Property. In the alternative, the Court
6 should grant WVJP relief from the automatic stay under either (i) § 362(d)(1) because the
7 Debtor is clearly attempting to abuse the bankruptcy process or (ii) § 362(d)(2) because the
8 Debtor has no equity in the Subject Property and there is absolutely no basis to believe she
9 needs the Subject Property to reorganize.

10 Even if relief from stay is inappropriate in this case, the Court should convert the
11 Bankruptcy Case to a proceeding under chapter 7 of the Bankruptcy Code because the debtor
12 clearly filed her latest bankruptcy petition in bad faith, she has failed to file a plan of
13 reorganization, and because conversion would be in the best interest of creditors.

14 II.

15 FACTUAL BACKGROUND

16 A. The Debtor's History of Bankruptcy Filings and Dismissals

17 This is the Debtor's third bankruptcy case in less than two years. On August 10,
18 2016, the Debtor filed a bankruptcy petition commencing case no. 16-30883 before this
19 Court (the "First 2016 Case"). On August 12, 2016, this Court entered its *Order for*
20 *Individuals in Chapter 7 and Chapter 13 Cases to File Required Documents and Notice Re*
21 *Automatic Dismissal* [Dkt. No. 4 in 16-30883] (the "Dismissal Notice"). The Dismissal
22 Notice notified the Debtor that the First 2016 Case would be automatically dismissed if,
23 within fourteen days, she did not file, among other things, her (i) Summary of Assets and
24 Liabilities, (ii) all Schedules, (iii) Statement of Financial Affairs, and (iv) Chapter 13 Plan.
25 The Debtor failed to file any of the documents identified in the Dismissal Notice. On August
26 30, 2016, this Court entered its *Order and Notice of Dismissal for Failure to Company* [Dkt.
27 No. 8 in 16-30883], which dismissed the First 2016 Case.

1 On November 28, 2016, less than three months after the dismissal of the First 2016
2 Case, the Debtor filed a bankruptcy petition commencing case no. 16-31270 before this
3 Court (the “Second 2016 Case”). On November 29, 2016, this Court entered its *Notice of*
4 *Failure of Debtor(s) to Provide Statement of Social Security Number and/or List of*
5 *Creditors*, which notified the Debtor that the Second 2016 Case could be dismissed within
6 seven days if she did not file the List of Creditors required under 11 U.S.C. § 521(a)(1) [Dkt.
7 No. 2 in 16-31270]. The Debtor not only did not file the required List of Creditors, she also
8 did not file any other document in the Second 2016 Case other than a petition. On December
9 8, 2016, exactly ten days after the Debtor commenced the Second 2016 Case, this Court
10 entered its *Order and Notice of Dismissal for Failure to Comply* [Dkt. No. 6 in 16-31270],
11 which dismissed the Second 2016 Case.

12 The Debtor filed a petition commencing the above-captioned bankruptcy case (the
13 “Third Bankruptcy Case”) on March 13, 2018 [Dkt. No. 1 in 18-30281]. Notably, on the
14 petition that initiated the Third Bankruptcy Case, the Debtor replied “No” to question 9,
15 which asked whether she had filed for bankruptcy within the last eight years. On March 14,
16 2018, this Court entered its *Order for Individuals in Chapter 13 Case to File Required*
17 *Documents and Notice of Automatic Dismissal*, by which the Debtor was ordered to file,
18 among other things, her (i) Summary of Assets and Liabilities, (ii) all Schedules, (iii)
19 Statement of Financial Affairs, and (iv) Chapter 13 Plan, by March 28, 2018 (the “2018
20 Requirements Order”). As of the filing of this Motion, the Debtor had still failed to comply
21 with the 2018 Requirements Order or to file anything in the Third Bankruptcy Case other
22 than a bare petition.

23 **B. The Background to WVJP’s Claim Against the Debtor**

24 WVJP is a creditor pursuant to its status as the assignee of a money judgment against
25 the Debtor. The money judgment was entered against Ms. Smith on February 16, 2007 by
26 the Superior Court of the State of California County of San Mateo in the case known as
27 *Peter S. Bedrossian v. Cynthia Smith* (Case No. 458757) (the “State Court Action”) and was
28 in the original amount of \$86,660.00 (such judgment, the “Judgment”). A copy of the

1 Judgment is attached to the Declaration of Anthony O'Neill filed concurrently with, and in
2 support of, the Motion (the "O'Neill Declaration") as Exhibit A.

3 An Abstract of Judgment issued by the clerk in the State Court Action was recorded
4 on March 23, 2007 as Instrument No. 2007-044462 of the Official Records (the "Abstract").
5 A copy of the Abstract is attached to the O'Neill Declaration as Exhibit B. Through the
6 recording of Exhibit B, a judgment lien was created on all real property owned by Ms. Smith
7 in San Mateo County and thereafter through the life of the Judgment (CCP 697.310(a)).

8 Thereafter, the Judgment was assigned to Wolverine Ventures Management, LLC
9 ("Wolverine Ventures") as evidenced by that certain Acknowledgement of Assignment of
10 Judgment filed in the State Court Action on September 9, 2016. On September 20, 2016
11 and October 14, 2016, an Amended Abstract of Judgment naming Wolverine Ventures as
12 the Assignee of the Judgment was recorded in the Official Records as Instrument Nos. 2016-
13 095957 and 2016-107004, respectively.

14 On November 9, 2016 an Amended Application For and Renewal of Judgment
15 ("Amended Renewed Judgment") was filed in the State Court Action.

16 On November 29, 2016, a certified copy of the Amended Renewed Judgment was
17 recorded as Instrument No. 2016-124853 of the Official Records. A copy of the recorded
18 Amended and Renewed Judgment is attached as Exhibit C to the O'Neill Declaration.
19 Through the recording of the Amended and Renewed Judgment, the judgment lien created
20 by the recording of the Abstract was extended for ten years from October 24, 2016 (CCP
21 683.180(a)).

22 Thereafter, the Judgment was assigned to WVJP. On July 31, 2017 an Amended
23 Abstract of Judgment (the "Amended Abstract") issued by the clerk in the State Court Action
24 and listing WVJP as the assignee of the Judgment (as amended and renewed) was recorded
25 as Instrument No. 2017-066001 of the Official Records. A copy of the Amended Abstract
26 is attached to the O'Neill Declaration as Exhibit D.

27 On February 5, 2018, WVJP filed its *Application for Order Directing Sheriff to Sell*
28 *Real Property* (the "Sale Application") in the State Court Action, by which WVJP requested

1 the State Court enter an order directing the Sheriff of San Mateo County to sell the Subject
2 Property (the “Sheriff Sale Order”). A copy of the Sale Application is attached to the O’Neill
3 Declaration as Exhibit E. The hearing on the Sale Application was scheduled to occur on
4 March 19, 2018. The Debtor commenced the Third Bankruptcy Case just a few days before
5 such hearing was scheduled to occur.

6 **C. The Debtor’s Prior Use of Bankruptcy to Frustrate a Trustee’s Sale of the**
7 **Subject Property**

8 On January 6, 2007, People’s Choice Home Loan, Inc. recorded a deed of trust against
9 the Subject Property as Instrument No. in the Official Records 2007-006673 (the “Trust
10 Deed”).

11 On October 8, 2014, a Notice of Default and Election to Sell Under Deed of Trust in
12 connection with the Trust Deed was recorded in the Official Records as Instrument No.
13 2004-091914 (the “Default Notice”).

14 On June 15, 2016 a Notice of Trustee’s Sale in connection with the Trust Deed was
15 recorded in the Official Records as Instrument No. 2016-058120 (the “Sale Notice”).
16 According to the Sale Notice, the sale of the Subject Property was to occur on July 12, 2016
17 (the “Sale Date”). WVJP can find no indication in the public record that the Subject Property
18 was actually sold in connection with the Sale Notice. Ms. Smith filed the First Bankruptcy
19 Case less than a month after the Sale Date.

20 **D. The Value of, and Claims Secured By, the Subject Property**

21 The Subject Property has an appraised value of \$1.9 million, according to an appraisal
22 dated as of January 22, 2018 and prepared for WVJP (the “Appraisal”). A copy of the
23 Appraisal is attached to the Declaration of Michael Botta filed concurrently with, and in
24 support of, this Motion.

25 The total value of all liens on the Subject Property, according to a Litigation
26 Guarantee dated as of January 11, 2018 and prepared by Lawyers Title Company for
27 Wolverine Ventures (the “Litigation Guarantee”), is approximately \$1,793,266. A copy of
28 the Litigation Guarantee is attached to the O’Neill Declaration as Exhibit F. The liens on

1 the Subject Property that are listed in the Litigation Guarantee (which may not reflect all
2 accrued interest) are:

| | | |
|----|---------------------------------------|------------------------|
| 3 | 1. Deed of Trust with Towd Point | \$1,000,000.00 |
| 4 | Master Funding Trust 2014-NP1, | |
| | U.S. Bank Trust as beneficiary | |
| 5 | 2. State of California Employment | \$91,777.68 |
| 6 | Development Department | |
| 7 | 3. WVJP 2017-1, LP | \$170,658.38 |
| 8 | 4. State of California Employment | \$3,883.25 |
| | Development Department | |
| 9 | 5. State of California Employment | \$1,889.97 |
| 10 | Development Department | |
| 11 | 6. State of California Employment | \$94,836.66 |
| | Development Department | |
| 12 | 7. State of California Employment | \$3,947.49 |
| 13 | Development Department | |
| 14 | 8. Internal Revenue Services | \$12,587.03 |
| 15 | 9. State of California Employment | \$37,895.61 |
| | Development Department | |
| 16 | 10. Holly Millar | \$120,500.37 |
| 17 | 11. State of California Employment | \$2,901.44 |
| 18 | Development Department | |
| 19 | 12. State of California Franchise Tax | \$2,576.35 |
| | Board | |
| 20 | 13. Grant & Weber, a Corporation | \$5,647.27 |
| 21 | 14. Western States Land Corporation | \$25,000.00 |
| 22 | 15. Reyna Vasquez | \$23,112.33 |
| 23 | 16. Internal Revenue Services | \$86,567.29 |
| 24 | 17. Nelida Cortex Contreras | \$37,794 |
| 25 | 18. Florists' Transworld Delivery | \$71,697.41 |
| 26 | TOTAL | \$ 1,793,266.00 |

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III.

**STAY RELIEF IS WARRANTED UNDER SEVERAL PROVISIONS OF THE
BANKRUPTCY CODE**

A. **In Rem Stay Relief is Warranted Because the Debtor Has Engaged in a Scheme
to Delay and Hinder Creditors with an Interest in the Subject Property**

“The Supreme Court has noted that Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with matters connected with bankruptcy estates.” *In re Fernandez*, 212 B.R. 361, 368 (Bankr. C.D. Cal. 1997), *aff’d on other grounds*, 227 B.R. 174 (9th Cir. BAP 1998) and *aff’d mem.*, 208 F.3d 220 (9th Cir. 2000).

“In appropriate circumstances, the Court may, on motion of a party or *sua sponte*, grant the movant *in rem* relief when there is evidence of a bad faith effort to delay a creditor with a futile bankruptcy filing or other evidence that indicates *in rem* relief is necessary to prevent abuse of process.” *In re Maude H. Henderson & Daniel S. Henderson, IV Irrevocable Trust*, 395 B.R. 893, 899 (Bankr. D.S.C. 2008).

Before 2005, courts provided *in rem* relief under Section 105(a) to prevent the harm arising from abusive bankruptcy filings. *County of Fresno v. Golden State Capital Corp. (In re Golden State Capital Corp.)*, 317 B.R. 144, 150 (Bankr. E.D. Cal. 2004); *In re Kinney*, 51 B.R. 840, 844-845 (Bankr. C.D. Cal. 1985) (“To allow the mortgagee to manipulate the judicial process through needless delays of the foreclosure is a fraud on creditors. . . . Where...debtors utilize the automatic stay without the intent or ability to reorganize their financial activities or effectuate a realistic repayment plan, they are abusing the bankruptcy system.”).

In 2005, this power of the court granting *in rem* relief was specifically codified as Section 362(d)(4), which provides as follows:

with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

1 (A) transfer of all or part ownership of, or other interest in, such real property
2 without the consent of the secured creditor or court approval; or

3 (B) multiple bankruptcy filings affecting such real property.

4 As can be seen from the language of the statute, a creditor with a claim secured by
5 real property can obtain *in rem* relief under Section 362(d)(4) by showing that (i) the debtor
6 engaged in a scheme, (ii) to delay, hinder, or defraud that creditor, and (iii) which involved
7 multiple bankruptcy filings affecting the real property that is the subject of the requested *in*
8 *rem* relief. *See Alakozai v. Citizens Equity First Credit Union (In re Alakozai)*, 499 B.R.
9 698, 703 (9th Cir. 2013).

10 In this case, WVJP is clearly a creditor with a claim against the Debtor that is secured
11 by the Subject Property. WVJP is the assignee of the Judgment (as amended and renewed)
12 and an abstract of the Judgment (as amended and renewed) has been filed in the Official
13 Records, creating a lien on the Subject Property in favor of WVJP.

14 Moreover, the Debtor's history of bankruptcy filings constitutes a scheme to delay
15 and hinder creditors, most recently WVJP, from recovering on their claim, including by
16 taking action on their security interest in the Subject Property. In her latest bankruptcy
17 petition, the Debtor has attempted to obscure this history by denying the fact she filed for
18 bankruptcy twice in 2016. But this history and the Debtor's motive for repeatedly seeking
19 bankruptcy protection is undeniable. In filing the First Bankruptcy Case, the Debtor sought
20 nothing more than to hinder and delay foreclosure on the Trust Deed with as little effort as
21 possible: by filing only a bankruptcy petition. The fact the Debtor never filed anything else
22 in the First Bankruptcy Case shows she never intended to actually reorganize.

23 Similarly, in filing the Third Bankruptcy Case, the Debtor has attempted to hinder
24 and delay WVJP's effort to secure the Sheriff Sale Order by again doing as little as possible.
25 Once again, she has failed to file anything other than a petition. In fact, to this day, through
26 three bankruptcy cases, the Debtor has never filed a Summary of Assets and Liabilities, a
27 Statement of Financial Affairs, any Schedules, or a Chapter 13 Plan.

1 The Debtor's motive in continually filing for bankruptcy could not be more clear, and
2 WVJP should be granted *in rem* relief to protect its claim from any further attempts by the
3 Debtor to abuse the bankruptcy process.

4 **B. In the Alternative to *In Rem* Relief, Relief from the Automatic Stay Pursuant**
5 **to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) is Appropriate**

6 Even if this Court does not grant *in rem* relief under Section 362(d)(4), WVJP is at
7 minimum, entitled to relief from stay in the Debtor's case pursuant to Sections 362(d)(1)
8 and 362(d)(2).

9 **1. Sufficient Cause Exists for Stay Relief Under 11 U.S.C. § 362(d)(1)**

10 Section 362(d)(1) of the Bankruptcy Code provides that "[o]n request of a party in
11 interest and after notice and a hearing, the court shall grant relief from the stay (1) for
12 cause...." 11 U.S.C. § 362(d)(1). "The term 'cause' as used in § 362(d)(1) 'is a broad and
13 flexible concept which permits a bankruptcy court, as a court of equity, to respond to
14 inherently fact-sensitive situations.'" *Scripps GSB I, LLC v. A Partners, LLC (In re A*
15 *Partners, LLC)*, 344 B.R. 114, 126 (Bankr. E.D. Cal. 2006). Factors to consider in
16 determining whether the automatic stay should be modified for cause include: (1) the
17 number of times the debtor has filed for bankruptcy; (2) whether, in a repeat filing case, the
18 circumstances indicate an intention to delay and hinder creditors; (3) the debtor's overall
19 good faith; and (4) whether the debtor has complied, and is otherwise complying, with the
20 Bankruptcy Code and Rules. *See Cruz v. Strauss (In re Cruz)*, 516 B.R. 594, 603-4 (B.A.P.
21 9th Cir. 2014). In any given case, one factor may so outweigh the others as to be dispositive.
22 *Id.* at 604.

23 Here, as noted above, Ms. Smith is a serial pro se bankruptcy filer who has
24 commenced three separate and short-lived bankruptcy cases in the last two years. Each of
25 these cases has followed the same pattern: Ms. Smith files a bare bankruptcy petition and
26 then flouts the Bankruptcy Code and Rules by failing to file anything else, despite receiving
27 notice of potential dismissal. Ms. Smith's first two bankruptcy cases were promptly
28 dismissed within weeks of their filing and this latest case is well on its way to a similar fate.

Moreover, as described above, Ms. Smith has clearly timed at least two of these cases (the First Bankruptcy Case and the Third Bankruptcy Case) to delay and hinder creditors who were seeking to exercise their lawful remedies against the Subject Property. Ms. Smith's attempt to hide her prior bankruptcies by denying them on her latest petition is further evidence of her abuse of the bankruptcy process.

2. The Debtor Has No Equity in the Subject Property and the Subject Property is Not Needed for Reorganizing, Allowing Relief Under 11 U.S.C. § 362(d)(2)

WVJP is also entitled to relief from stay in the Debtor's case pursuant to Section 362(d)(2). Section 362(d)(2) provides that, after notice and a hearing, a party in interest shall receive relief from stay of an act against property if: (i) the debtor has no equity in such property and (ii) such property is not necessary for an effective reorganization. 11 U.S.C. § 362(d)(2). A debtor has no equity in property for purposes of 362(d)(2) when the sum of (i) the debts secured by liens on the property and (ii) the costs of selling the property, which in some cases have been calculated at up to ten percent of the property's value, exceed the value of the property. *See 3 Collier on Bankruptcy* § 362.07 (16th ed. 2017); *In re Faires*, 34 B.R. 549, 550 (Bankr. W.D. Wash 1983). In order for property to be necessary to an effective reorganization, a debtor must make at least some showing that such property is necessary to further the interests of the estate. *In re Faires*, 34 B.R. at 552-53.

In this case, the value of the Subject Property, according to the Appraisal, is \$1,900,000. The total amount of all liens on the Subject Property, according to the Litigation Guarantee, is \$1,793,266. Assuming the costs of selling the Subject Property amount to just six percent of the property's value (i.e., \$114,000), the Debtor has no equity in the Subject Property, as shown below:

| Value of Subject Property | - Total of all Liens on Subject Property | - Estimated Costs of Sale (6% of Subject Property's Value) | = Debtor's Equity |
|---------------------------|--|--|-------------------|
| \$1,900,000 | \$1,793,266 | \$114,000 | (\$7,266) |

Moreover, because the Debtor has not filed a Summary of Assets and Liabilities, Schedules, Statement of Financial Affairs or a Chapter 13 Plan in this latest bankruptcy case (or indeed in any of her three bankruptcy cases) there is absolutely no basis to conclude the Subject Property is necessary to an effective reorganization.

IV.

IN THE ALTERNATIVE TO STAY RELIEF, THE COURT SHOULD CONVERT THE CASE TO A CHAPTER 7 PROCEEDING UNDER 11 U.S.C. § 1307(c)

1. Cause Exists to Convert This Case Because of the Debtor's Bad Faith

This Court has power to convert the Bankruptcy Case to a proceeding under chapter 7 “for cause.” 11 U.S.C. § 1307(c). The Debtor’s bad faith can constitute cause for conversion under Section 1307(c). *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) (“*Leavitt I*”). Bad faith is determined by the totality of the circumstances. *In re Craighead*, 377 B.R. 648, 654 (Bankr. N.D. Calif. 2007). Certain factors are indicative of bad faith, including: (1) whether the debtor misrepresented facts in her petition, unfairly manipulated the Bankruptcy Code, or otherwise filed her Chapter 13 petition in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; and (4) whether egregious behavior is present. *See Leavitt I*, 171 F.3d at 1223. Bad faith does not require fraudulent intent by the debtor, ill will directed toward creditors, or an affirmative attempt by the debtor to violate the law. *Leavitt I*, 171 F.3d at 1225.

Once the issue of bad faith is raised, the debtor has the burden of proving her good faith. *See In re Leavitt*, 209 B.R. 935, 940 (9th Cir. BAP 1997), *aff'd*, 171 F.3d 1219 (9th Cir. 1999); *In re Powers*, 135 B.R. 980, 997 (Bankr. C.D. Calif. 1991).

In this case, multiple indicators of the Debtor’s bad faith are present. Most significantly, this Debtor has a clear history of filing bankruptcy cases that are swiftly dismissed and this latest case appears to be no exception. This Debtor has never once made any effort to avoid the dismissal of any of her bankruptcy cases or challenge either of the two dismissal orders entered by this Court in her prior bankruptcies.

1 Such a history shows that the Debtor is attempting to unfairly manipulate the
2 Bankruptcy Code for an inequitable result. The Debtor's serial filings suggest that she is
3 willing to file a bankruptcy petition without regard to her duties under the Bankruptcy Code,
4 simply to prevent a secured creditor from enforcing its rights. Through three bankruptcy
5 cases now, the Debtor has shown absolutely no intention to comply with the statutory
6 requirements of a debtor in bankruptcy and has made no effort to reorganize her financial
7 affairs. Her behavior practically guarantees that another petition will follow if this case is
8 dismissed and a secured creditor makes any new attempt to enforce its rights.

9 In addition, the Debtor clearly misrepresented facts on her latest bankruptcy petition
10 when she denied having filed any previous bankruptcies in the past eight years. Although
11 the First 2016 Case and the Second 2016 Case were quickly dismissed, that does not mean
12 they never happened or that they can be swept under the rug so casually (and under penalty
13 of perjury).

14 The Debtor's actions here also demonstrate an intent to avoid being held accountable
15 for a state court judgment and to defeat WVJP's effort to obtain the Sheriff Sale Order. The
16 Debtor commenced the instant Bankruptcy Case only days before the hearing on WVJP's
17 Sale Application was scheduled to occur. That timing alone is a strong indication of the
18 Debtor's true intent in filing this case. Perhaps even more telling, however, is that since
19 filing her latest petition, the Debtor has failed to take any action that would even hint at a
20 different intent (such as aiming to reorganize her financial affairs).

21 Lastly, egregious behavior is present because this Debtor has repeatedly
22 demonstrated a willingness to burden this Court and stymie her creditors, yet has failed to
23 make any attempt to use the bankruptcy process for legitimate purposes.

24 **2. The Debtor has not Timely Filed a Plan, Warranting Conversion under**
25 **11 U.S.C. § 1307(c)(3)**

26 When a debtor's failure to file a plan of reorganization is part of a larger pattern of
27 unreasonable delay, a court has discretion to exercise its authority to convert a bankruptcy
28 case under Section 1307(c)(3). *See* 8 Collier on Bankruptcy § 1307.04 (16th ed. 2018).

1 Here, there is absolutely no reason to believe the Debtor will ever file a plan of
2 reorganization in this case or has ever intended to file one in any of her previous cases. The
3 Debtor has done absolutely nothing in response to this Court's 2018 Requirements Order,
4 entered on March 14, 2018, which instructed the Debtor to file a Chapter 13 Plan (among
5 other documents) within fourteen days or risk the dismissal of the Bankruptcy Case. This
6 inaction is par for course for this Debtor. Her entire history in bankruptcy is nothing but a
7 pattern of unreasonably delaying and hindering the actions of creditors by repeatedly filing
8 bankruptcy petitions and then failing to file any other required documents.

9 **3. Conversion is in the Best Interest of Creditors**

10 This Debtor has repeatedly abused the bankruptcy process, racked up liens on the
11 Subject Property that are nearly equal to its market value, and failed to provide more
12 information on her financial affairs than what is provided in a bare bankruptcy petition.
13 Rather than dismiss this case, creditors would be served best by converting it to Chapter 7
14 in order to (i) prevent further abuse of the bankruptcy process by this Debtor, (ii) allow a
15 Chapter 7 trustee to investigate the Debtor's financial affairs and possibly pay creditors, and
16 (iii) retain jurisdiction to compel the Debtor to comply with the requirements of the
17 Bankruptcy Code.

18 **V.**

19 **CONCLUSION**

20 For the reasons set forth in this Motion, WVJP respectfully requests that this Court
21 enter an order:

22 1. Granting *in rem* relief from the automatic stay under 11 U.S.C. § 362(d)(4)
23 with respect to the Subject Property;

24 2. Authorizing the recording of such order granting *in rem* relief against the
25 Subject Property such that the order is binding in subsequent cases pursuant to 11 U.S.C. §
26 362(d)(4);

27 3. Authorizing WVJP to exercise any of its lawful remedies with respect to the
28 Subject Property, including;

4. Waiving the stay period set forth in Federal Rule of Bankruptcy Procedure 4001(a)(3); and

5. Granting any other relief that this Court deems necessary and appropriate.

In the first alternative to relief under § 362(d)(4), WVJP respectfully requests that this Court, at a minimum, grant relief from the automatic stay in the Debtor's case with respect to the Subject Property pursuant to 11 U.S.C. § 362(d)(1) and/or 11 U.S.C. § 362(d)(2).

In the second alternative to relief under § 362(d)(4), WVJP respectfully requests that this Court convert the Bankruptcy Case to a proceeding under Chapter 7 pursuant to 11 U.S.C. § 1307(c)(3).

Dated: March 26, 2018

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By

/s/ *J. Barrett Marum*

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